

REMARKS

This Amendment is responsive to the Office Action dated June 8, 2009. Applicant has amended claims 1, 6-8, 11, 15-17, 26-29, 33, 34, 36 and 39 and cancelled claims 2, 12, 23, 30, 37 and 44. Claims 1, 3-11, 13-22, 24-29, 31-36, and 38-43 are pending.

Preliminary Comments

In the Office Action, the "Office Action Summary" page indicated that claim 24 was rejected. However, the Office Action does not appear to provide any statutory basis for the rejection of claim 24. As such, Applicant has not been put on notice regarding the grounds of rejection for claim 24, and therefore has been deprived of an opportunity to respond with arguments and/or amendments, as necessary, in order to overcome the rejection. Therefore, Applicant respectfully requests that if claim 24 is rejected in the next Office Action, the Office Action be made Non-Final in order to allow Applicant an opportunity to respond to the statutory basis relied upon in support of the rejection of claim 24.

Claim Rejections Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1, 3, 4, 8, 9, 10, 11, 13, 17, 22, 25, 29, 31, 32, 33, 34, 35, 36, 38, 39, and 43 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,944,745 to Rueter, hereafter "Rueter," in view of U.S. Patent Publication No. 2004/0122294 by Hatlestad et al., hereafter "Hatlestad." The Examiner also rejected claims 2, 7, 12, 16, 18, 19, 23, 28, 30, 40, 41, and 44 under U.S.C. § 103(a) as being unpatentable over Rueter in view of Hatlestad, and further in view of U.S. Patent No. 6,292,698 to Duffin et al., hereafter "Duffin." Additionally, the Examiner rejected claims 5, 6, 14, 15, 26, and 27 under U.S.C. § 103(a) as being unpatentable over Rueter in view of Hatlestad, and further in view of U.S. Patent No. 5,920,271 to Hwang, hereafter "Hwang." The Examiner also rejected claims 20, 21, and 42 under U.S.C. § 103(a) as being unpatentable over Rueter in view of Hatlestad, and further in view of U.S. Patent No. 7,060,031 to Webb et al., hereafter "Webb."

Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's amended claims, and provide no teaching that

would have suggested an objective reason for modification to arrive at the inventions defined by the amended claims.

Claims 1, 3-7, 17-22, 25-29, 31 and 32

Applicant's amended claim 1, for example, recites a method that includes receiving events at a prioritization engine from one or more remote monitors, wherein the remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, and wherein the events include therapy events and diagnostic events. Claim 1 also specifically requires wherein the prioritization engine and the one or more remote monitors are both external to the patient. The method further requires prioritizing, with the prioritization engine, the received events, and, as amended, presenting, with a user interface, a list of the patients and a list of the events for each of the patients based on the prioritization. Applicant respectfully submits that the applied references, whether taken alone or in combination, fail to disclose each and every feature of Applicant's claim 1, as amended.

As one example, the applied references fail to disclose or suggest "receiving events at a prioritization engine from one or more remote monitors, wherein the remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients." As another example, the applied references fail to disclose or suggest "wherein the prioritization engine and the one or more remote monitors are both external to the patient. As an additional example, the applied references fail to disclose or suggest "presenting, with a user interface, a list of the patients and a list of the events for each of the patients based on the prioritization."

In support of the rejection of Applicant's claim 1, the Examiner cited to column 1 lines 44-48 and lines 65-67, column 2 lines 1-9 and lines 10-25, and column 3 lines 33-36 of Rueter. The Examiner asserted that the cited portions of Rueter teach a method comprising a remote monitor, wherein the remote monitor obtains the events from interrogation of a medical device implanted within a patient, and wherein the prioritization engine and the remote monitor are both external to the patient, prioritizing, with the prioritization engine, the received events and presenting, with a user interface device, a list of the events based on the prioritization. The Examiner then acknowledged that Rueter does not teach wherein the events include therapy events and diagnostic events nor receiving the events from a remote monitor. The Examiner then stated that Hatlestad teaches data that includes therapy and diagnostic data and a remote monitor that can access the PDA/prioritization engine citing paragraph 41, and Fig. 7 and paragraphs

87-88 of Hatlestad. Finally, the Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the prioritizing method taught by Rueter with the features of Hatlestad to prevent the implanted device from being overworked.

Notably, the Examiner continued to assert that the Rueter teaches a prioritization engine external to the patient. Applicant respectfully suggests that the Examiner has misinterpreted Rueter. Based on the portions of Rueter cited in the Office Action, it appears that the Examiner has interpreted the CPU within the IMD (and therefore, within the patient) described by Rueter as the “prioritization engine” recited in Applicant’s amended claim 1. The Rueter CPU is within the patient, and therefore cannot be a prioritization engine external to the patient, as required by claim 1.

Rueter generally describes an IMD that includes a CPU and random access memory (RAM) for storing collected data. The amount of RAM may be more limited than the amount of data collected by the IMD. Accordingly, the CPU is designed to perform diagnostic routines in order to select the most important data for storage within the limited memory space of the RAM. In some cases, the CPU may overwrite less important data stored in the RAM with data that is more important so that the most important data is available when the stored data is later retrieved by an external device.

The Examiner has not argued that it would have been obvious to modify Rueter such that the functionality performed by the CPU is instead performed externally. Indeed, modification such that the prioritization in Rueter was external would eliminate the need for such prioritization (i.e., the limited memory capacity of the IMD). Therefore, such a modification would not have been obvious to a person of ordinary skill in the art.

The Examiner did assert that Hatlestad teaches a “PDA/prioritization engine” assessable by a remote monitor at FIG. 7 and paragraphs 87 and 88. However, while a PDA is mentioned, the cited portions of Hatlestad do not mention a “priority engine,” or suggest that the PDA includes a priority engine. Instead, the cited portions of Hatlestad indicate that a user uses the PDA to enter contextual data regarding the IMD and himself. Therefore, even if the Rueter system were modified to include the Hatlestad PDA, such modification would not appear to result in a prioritization engine external to the patient, as required by claim 1. Furthermore, it is unclear how such modification would “prevent the implanted device from being overworked,” as

suggested by the Examiner as a reason for modification of the Rueter system to include the Hatlestad PDA. It is entirely unclear in what sense the Examiner considers the implanted device of Rueter to be overworked.

Moreover, amended claim 1 requires "receiving events at a prioritization engine from one or more remote monitors, wherein the remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients," and "presenting, with a user interface, a list of the patients and a list of the events for each of the patients based on the prioritization." These limitations are similar to the limitations of previously presented claim 2, which is now cancelled. The Examiner acknowledged that Rueter fails to disclose prioritizing events obtained from a plurality of medical device implanted in different patients, and presenting a list of the patients and a list of the events for each of the patients based on the prioritization.

For the rejection of claim 2, the Examiner relied on Duffin, in addition to Rueter and Hatlestad. The Examiner argued that Duffin teaches prioritizing events obtained from a plurality of medical device implanted in different patients, and presenting a list of the patients and a list of the events for each of the patients based on the prioritization. Applicant respectfully disagrees.

The Examiner cited column 14, lines 25-29 of Duffin as teaching prioritizing events obtained from a plurality of medical device implanted in different patients, and presenting a list of the patients and a list of the events for each of the patients based on the prioritization. However, the cited portion of Duffin merely indicates that, for a clinical study, data from a plurality of study patients may be collected from a plurality of IMDs by a global communications and monitoring system. The cited portion of Duffin does not mention prioritizing the patients or events. The cited portion of Duffin certainly does not disclose prioritizing among events from different patients, much less presenting a list of patients and events for each of the patients based on the prioritization among the events from a plurality of patients. Nor are the cited teachings of Duffin sufficient to overcome the deficiency of Rueter with respect to the location of the prioritizing. The teaching of a global communications and monitoring system that may communicate with a plurality of IMDs is insufficient to modify Rueter to include an external prioritization amongst events from a plurality of patients.

Applicant's independent claims 17 and 29 have been amended to include limitations similar to the limitations recited in amended independent claim 1. Moreover, claims 2-7, 18-22, 25-28, 31, and 32 depend, either directly or indirectly, from one of independent claims 1, 17, or

29. Therefore, for at least the reasons outlined above regarding independent claim 1, the applied references, whether taken alone or in combination, fail to disclose or suggest each and every feature of claims 1, 3-7, 17-22, 25-29, 31 and 32. For at least these reasons, the Office Action has failed to establish a *prima facie* case for non-patentability of Applicant's claims 1, 3-7, 17-22, 25-29, 31 and 32 under 35 U.S.C. § 103(a). Withdrawal of these rejections is respectfully requested.

Claims 8-11, 13-16, 33-36, and 38.

Claim 8, as amended, is directed toward a method that includes interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data, and receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein each of the events of the event data describes one of a therapy event and a diagnostic event. Claim 8 specifically requires that the prioritization engine is external to the patient. The method further comprises assigning, with the prioritization engine, a relative importance to each of the received events.

Although independent claim 8 recites limitations different from the limitations recited in independent claim 1, the Examiner did not offer a separate explanation for the rejection of claim 8. Instead, the Examiner offered a single explanation for the rejection of independent claims 1 and 8. While independent claim 8 does recite different limitations than the limitations recited in independent claim 1, Applicant's amended independent claim 8 does include some limitations similar to the limitations recited in amended independent claim 1. In particular, both amended independent claims 1 and 8 require one or more remote monitors that receive or interrogate a plurality of medical devices implanted in different patients to obtain event data, and that the prioritization engine is external to the patient. Independent claim 33 has been amended to include limitations similar to the limitations recited in amended independent claim 8.

For at least the reasons discussed above with respect to claim 1, the applied references fail to disclose the limitations of claims 8 and 33. Furthermore, claims 9-11, 13-16, 34-36, and 38 depend, either directly or indirectly, from one of independent claims 8 and 33. For at least these reasons, the Office Action has failed to establish a *prima facie* case for non-patentability of Applicant's claims 8-11, 13-16, 33-36, and 38 U.S.C. § 103(a). Withdrawal of this rejection is respectfully requested.

Claims 39-43

Claim 39, as amended, is directed toward a device that includes a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, and wherein the events include therapy events and diagnostic events. Claim 39 also specifically requires that the prioritization engine and the remote monitor are both external to the patient.

For at least the reasons discussed above with respect to claim 1, the applied references fail to disclose the limitations of claim 39. For at least this reason, the Office Action has failed to establish a *prima facie* case for non-patentability of Applicant's claims 39-43, and 38 U.S.C. § 103(a). Withdrawal of this rejection is respectfully requested.

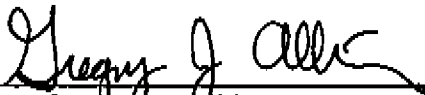
CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. In light of the differences described with respect to the independent claims, Applicant reserves further comment concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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